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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

DARTY CRONIN,

Plaintiff,

v.

MONEX DEPOSIT COMPANY, a
California limited Partnership,
LOUIS CARABINI, MICHAEL
CARABINI, MIKE MORONI, DAVID
GALA, DAN J. C. WALES, AND DOES
1 - 200

Defendants.

Case No. **SACV 08-01297 DOC (MLGx)**

COMPLAINT

JURY DEMANDED

1. Fraud Under Commodity Futures
Modernization Act of 2000

2. Common Law Fraud

3. Breach of Contract

4. Negligent Misrepresentation

5. Constructive Fraud

6. Common Count

Plaintiff alleges as follows:

JURISDICTION

1. The jurisdiction of this Court over the subject matter of
this action is predicated on 28 U.S.C. § 1337 and 7 U.S.C. § 1, et
seq.

1 **VENUE**

2
3 2. Plaintiff is informed and believes, and thereon alleges,
4 that all Defendants reside in this District. In addition, the claim
5 arose in this District.
6

7 **PARTY ALLEGATIONS**

8
9 3. Plaintiff DARTY CRONIN is an individual residing in the
10 County of Los Angeles, State of California ("CRONIN").
11

12 4. Plaintiff is informed and believes, and thereon alleges,
13 that Defendant MONEX DEPOSIT COMPANY ("MONEX") is a California
14 limited partnership with its principle place of business in Orange
15 County, California.
16

17 5. Plaintiff is informed and believes, and thereon alleges,
18 that Defendant LOUIS CARABINI ("L. CARABINI") is an individual
19 residing in Orange County, California.
20

21 6. Plaintiff is informed and believes, and thereon alleges,
22 that Defendant MICHAEL CARABINI ("M. CARABINI") is an individual
23 residing in Orange County, California.
24

25 7. Plaintiff is informed and believes, and thereon alleges,
26 that Defendant MIKE MORONI ("MORONI") is an individual residing in
27 Orange County, California.
28

1 8. Plaintiff is informed and believes, and thereon alleges,
2 that Defendant DAVID GALA ("GALA") is an individual residing in
3 Orange County, California.

4
5 9. Plaintiff is informed and believes, and thereon alleges,
6 that Defendant DAN J. C. WALES ("WALES") is an individual residing
7 in Orange County, California.

8
9 10. Plaintiff is not currently aware of the names and/or
10 capacities of the Defendants sued herein as DOES 1 through 200,
11 inclusive, and therefore sue said Defendants by such fictitious
12 names. Plaintiff is informed and believes that said Defendants are
13 responsible in some manner, or culpable for some reason, for
14 Plaintiff's damages and the acts alleged herein. Plaintiff will
15 amend this Complaint to allege the true names and capacities of
16 these Defendants when the same are ascertained. Defendants MONEX,
17 L. CARABINI, M. CARABINI, MORONI, GALA, WALES, and DOES 1 through
18 200, inclusive, shall be collectively referred to herein as
19 "Defendants".

20
21 11. Plaintiff is informed and believe that at all times
22 mentioned herein, each of the Defendants sued herein was an agent,
23 principal, representative, employer, or employee of each of the
24 other Defendants acting within the purpose and scope of such
25 agency, representation or employment, and that each Defendant
26 directed, was aware of, acted upon, ratified, and/or accepted the
27 benefits of the acts and representations of each of the other
28 Defendants. In addition, Plaintiff is informed and believes that

1 Defendants entered a conspiracy with one another to commit the acts
2 alleged hereinbelow as more fully described hereinbelow.

3
4 **INTRODUCTORY ALLEGATIONS**

5
6 12. Plaintiff is informed and believes, and thereon alleges,
7 that in or before June of 2007, Defendants MONEX, L. CARABINI, M.
8 CARABINI, MORONI, GALA, and WALES and Does 1 through 200, entered
9 into a conspiracy to engage in the silvers futures market, without
10 becoming members of a commission-designated board of trade as
11 required by Federal law, and with the intent to divest investors of
12 their monies for Defendants' personal gain by managing investment
13 accounts for futures contracts in a manner calculated to cause
14 their investors to lose money rather than to help investors realize
15 gains. Plaintiff is further informed and believes, and thereon
16 alleges, that in addition to seeking to have the benefits
17 associated with clientele that were paying fees on transactions,
18 and in addition to seeking to divorce their clientele from their
19 money, that Defendants also devised a scheme pursuant to which they
20 could leverage the monies invested by their clientele to generate
21 profits of their own, including the profits their clientele would
22 otherwise have realized. Plaintiff is further informed and
23 believes, and thereon alleges, that at all relevant times
24 Defendants were in need of substantial cash influx into MONEX by
25 reason of the fact that at all relevant times the Internal Revenue
26 Service was pursuing MONEX for over \$378,000,000 in unpaid taxes.
27 Plaintiff is informed and believes, and thereon alleges, that
28 Defendants, and each of them, undertook the acts described herein

1 in furtherance of said conspiracy.

2
3 13. MONEX advertises itself to be a purchaser and seller of
4 precious metals. Plaintiff is informed and believes that this
5 aspect of MONEX' business is simply a front to hide the unlawful
6 and fraudulent activities that are described in this Complaint and
7 to locate members of the general public that can be persuaded to
8 engage in silver futures contracts.

9
10 14. In or about June of 2007, CRONIN contracted to purchase
11 precious metals (gold and silver) from MONEX. Plaintiff is informed
12 and believes that he signed a written contract with MONEX relating
13 to standard purchases of precious metals from MONEX and standard
14 sales of precious metals to MONEX, though Plaintiff does not recall
15 doing so. As explained below, said contract, if it exists, is not
16 at issue in this litigation. In the course of purchasing precious
17 metals from MONEX, CRONIN was assigned a MONEX account
18 representative by the name of Sherry Boland ("Boland") and was told
19 that MONEX account representatives were knowledgeable and
20 sophisticated individuals in the precious metals market and that
21 their function was to provide investment strategies to their
22 clientele.

23
24 15. In or about June, 2007, in the course of CRONIN's making
25 of some standard purchases of precious metals from MONEX,
26 Defendants learned that CRONIN had significant wealth and was of
27 the class of clientele that Defendants desired to target as a
28 victim of the fraudulent scheme described herein.

1 16. Accordingly, Boland was assigned to CRONIN's account
2 for the very reason that she was an honest individual with no
3 knowledge of Defendants' fraudulent intentions who was extremely
4 skilled in the precious metals market and whom Defendants knew
5 would instill trust and confidence in CRONIN and guide him in the
6 investment of substantial sums in futures contracts without
7 arousing suspicion as to Defendants' true intent simply to take
8 such funds from him.

9
10 17. Plaintiff is informed and believes, and thereon alleges,
11 that Defendants intentionally suppressed the following material
12 facts from Sherry Boland so that she would unwittingly act as
13 Defendants' agent in suppressing material facts from CRONIN and
14 other MONEX clientele: A) That MONEX was engaged in a futures
15 contract business that required that it be registered on a
16 commission-designated board of trade under federal law, B) that the
17 "short" investment program described below was of a nature that
18 required registration on a commission based board of trade under
19 federal law, C) that it was Defendants' actual intent not to assist
20 their clients to realize profits but was, instead, their intent to
21 steal their clients' money through fraud, deception, and unlawful
22 acts, D) that Defendants intended to maneuver "short" transactions
23 in a manner calculated to cause their clientele to lose money, and
24 E) that Defendants would utilize their clients' monies procured
25 through the "short" investment program in a manner so as to realize
26 profits of their own at the expense of their clients, including
27 profits their clients would otherwise have realized. These
28 suppressed facts shall hereinafter be referred to as the

1 "Suppressed Facts".

2
3 18. Within a short time after CRONIN had made some standard
4 purchases of precious metals from MONEX, he was advised by Sherry
5 Boland, about a completely different MONEX program that had nothing
6 to do with the conventional purchase and sale program that CRONIN
7 started out with. Defendants represented to CRONIN, through their
8 unwitting agent, Sherry Boland, that this different program would
9 permit him to make a profit by selling silver when the price of
10 silver was declining in the market with the aid of his account
11 representative. This program was referred to as "going short". It
12 was represented to CRONIN by Defendants, through Bolin, that in a
13 "short" transaction he would commit to MONEX to sell silver at a
14 specified price and in a specified quantity, but with a deferred
15 consummation date and that under this program MONEX would assure
16 CRONIN that it would arrange and assure the purchase of the silver
17 at that price through an undisclosed purchaser and that at any
18 given time in the future that CRONIN determined to buy the silver
19 to cover the sale MONEX would produce a seller at the then existing
20 market price. Accordingly, on a date certain CRONIN could lock in
21 a sales price for silver at the then prevailing rate in a specified
22 amount, but without having to cover the sale at that time, and
23 could buy the silver to cover the sale at a future time of his own
24 choosing at the market rates prevailing at the time of the
25 election. Thus, if the price of silver went down after the
26 commitment to sell CRONIN would make a profit based on the "bet"
27 that the price of silver would drop. If the price of silver
28 increased above the committed sale price CRONIN could lose money if

1 the market trend did not reverse and decline once again. CRONIN is
2 informed and believes that Sherry Boland was authorized by her
3 superiors at MONEX to offer this program to CRONIN, and to make the
4 foregoing representations regarding it, and that she was given
5 authority to enter into an oral agreement with CRONIN with regard
6 to the program.

7
8 19. The means through which MONEX could permit this program to
9 operate are unknown to CRONIN as they were never explained to him.
10 Only the concept that CRONIN could make a profit in a declining
11 silver market on the terms just described was explained and
12 represented and that this would ultimately be accomplished by MONEX
13 guarantying to produce a buyer at the locked in sales price and a
14 seller of the silver necessary to back CRONIN's prior "sale" from
15 which CRONIN could purchase the silver to cover the sale at less
16 than the sales price if the market declined. Plaintiff is informed
17 and believe that to make this program work MONEX would have to have
18 offsetting "long" transactions to balance the "short" transactions
19 and that the "long" offsets were either from commitments of other
20 MONEX customers or were the commitment of MONEX itself without the
21 silver bullion to back it up. Indeed, Plaintiff is informed and
22 believes that with regard to all short transactions he entered with
23 MONEX pursuant to the oral agreement described below, that there
24 was no physical transfer of silver from seller to buyer (and that
25 there was no intent that actual physical delivery of silver would
26 occur) and that a "short" transaction was either literally a paper
27 transaction with no silver to back it or was for all practical
28 purposes strictly a paper transaction the value of which turned on

1 the outcome of "betting" on market trends over time rather than in
2 the value of the commodity in a straight forward purchase and sale.
3

4 20. In summary, at least the following misrepresentations were
5 made to CRONIN by Defendants through their unwitting agent Bolin:
6 1) that MONEX was offering CRONIN an opportunity to make a profit
7 in a declining silver market when they harbored the opposite
8 intent, 2) that MONEX would provide a sound investment strategy,
9 designed to make his investments profitable, through the account
10 representative assigned to CRONIN (this statement was true with
11 regard to Boland but was not true with regard to the intended
12 future account representative to be assigned to CRONIN under the
13 bait and switch described below), 3) that MONEX would act
14 consistent with the terms of the program as outlined above, and
15 4) that in all respects Defendants' had CRONIN's interests at
16 heart. These misrepresentations shall hereinafter be referred to as
17 the "Initial Misrepresentations".
18

19 21. Based on the Initial Misrepresentations and without
20 knowledge of the Suppressed Facts, CRONIN decided he wanted to
21 invest in "short" transactions with MONEX and to enter an agreement
22 with MONEX to that effect and so advised Sherry Boland. Boland
23 orally agreed to entry of such an agreement on behalf of MONEX
24 resulting in the formation of an oral agreement between MONEX and
25 CRONIN whereunder CRONIN could invest in silver futures ("Futures
26 Contract"). The terms of the Futures Contract, express and implied,
27 were as follows: 1) CRONIN's account would be managed by an account
28 representative who would formulate and provide to CRONIN an

1 investment strategy - - i.e., whether to make conventional
2 purchases and sales of silver or whether to invest his monies in
3 the "short" transaction format wherein he could speculate as to
4 whether the price of silver would drop and profit if it did drop,
5 2) the account representative managing his account would be more
6 sophisticated than CRONIN with silver investments in general and,
7 more particularly, in market trends, and would have CRONIN's best
8 interests at heart, 3) that MONEX, through its sole efforts outside
9 of the control of CRONIN, would guaranty that at any point in time
10 that CRONIN decided to make the "purchase" to offset the "sale" in
11 a "short" transaction there would be a seller available for CRONIN
12 to buy at the then prevailing market rates which would then be
13 matched against his sell commitment - - thus MONEX assured CRONIN
14 that through its efforts CRONIN would be able to sell high and buy
15 low if the silver market dropped through this deferred form of
16 transaction, and 4) that CRONIN would go "short" with the intent of
17 making a profit based on pure speculation as to fluctuations in the
18 price of silver subject only to the risk that silver market rates
19 might rise instead of fall. Implied within this oral agreement was
20 a covenant of good faith and fair dealing wherein MONEX agreed that
21 it would do nothing to deprive CRONIN of the benefit of his
22 bargain, including by avoiding the making of statements that were
23 calculated to cause CRONIN to lose money so that Defendants could
24 enrich themselves. Such terms were applicable as to all of the
25 specific investments CRONIN would make under the program. ("Futures
26 Transactions").

27
28 22. Consistent with Defendants' plan to deceive CRONIN, Boland

1 had CRONIN's interests at heart in managing his account and he
2 gained trust and confidence in dealing with MONEX as a consequence.
3 CRONIN entered Futures Transactions pursuant to the Futures
4 Contract and made a profit by following Boland's investment
5 strategy in this regard. Over time CRONIN invested millions in
6 Futures Transactions. Plaintiff is informed and believes, and
7 thereon alleges, that Defendants also assigned Boland to other
8 substantial accounts with clientele that had substantial monies,
9 also with the intent of building their faith and confidence and
10 investment outlay, and then terminated Boland on or about July 18,
11 2008. By terminating BOLAND Defendants would be free to acquire
12 control over CRONIN's "short" investments and to persuade him to
13 abandon those investments in favor of conventional purchase of
14 silver all as further set forth herein.

15
16 23. Plaintiff is informed and believes that at all relevant
17 times L. CARABINI and M. CARABINI supervised and controlled the
18 actions of MORONI who was the Vice President of MONEX, that as Vice
19 President MORONI was involved in management at MONEX and had been
20 one of the individuals that ultimately supervised Sherry Boland and
21 other account representatives. On or about July 18, 2008, MORONI
22 represented to CRONIN, in substance, that Sherry Boland would no
23 longer be handling CRONIN's account but that CRONIN should not be
24 concerned because WALES was being assigned to his account and that
25 WALES was the best account representative that MONEX had and that
26 he had more expertise and sophistication in silver investments than
27 CRONIN and that CRONIN could, and should, trust WALES' statements
28 to CRONIN. MORONI further represented to CRONIN that WALES knew

1 CRONIN's account and wanted to take care of it and that WALES got
2 all of the big accounts like CRONIN's. CRONIN did not know WALES
3 and accepted, as true, MORONI's representation. MORONI also
4 suppressed the fact that Boland had been terminated by MONEX - - a
5 fact which would have proved highly relevant to CRONIN given his
6 trust and confidence in Boland. ("MORONI Misrepresentations and
7 Suppression"). Based on MORONI's Misrepresentations and Suppression
8 CRONIN determined he would accept WALES as his new account
9 representative.

10
11 24. In order to assure that CRONIN would terminate his "short"
12 investments to the enrichment of Defendants, shortly after becoming
13 CRONIN's account representative, WALES represented to CRONIN that
14 if CRONIN followed his advice that he would never have an equity
15 call and based on MORONI's representations of WALES' skills CRONIN
16 believed WALES. Shortly after becoming CRONIN's account
17 representative WALES represented to CRONIN that the silver market
18 was going to turn upward and that CRONIN should drop his "short"
19 approach and go with conventional purchases of silver (sometimes
20 referenced at MONEX as "going long"). When CRONIN questioned WALES
21 about this WALES reemphasized that he knew the price of silver was
22 going to go up and that he would guaranty CRONIN he would not lose
23 any money if CRONIN terminated his "short" investments and that he
24 would give him a letter signed by someone else in the company
25 guarantying him he would not lose money. ("WALES
26 Misrepresentations"). WALES pressured CRONIN strongly and CRONIN
27 accepted WALES' representations and assurances and acted upon them,
28 based on the misrepresentations described above and his ignorance

1 of the suppressed facts described above.

2
3 25. By accepting WALES' Misrepresentations, in a few short
4 weeks CRONIN lost in excess of \$1.3 million of the funds he had
5 invested and Plaintiff is informed and believes that Defendants
6 enriched themselves by the same amount. In addition, had he
7 received sound representations CRONIN would have realized a profit
8 of \$4 - 5 million on his "short" transactions. Instead, Plaintiff
9 is informed and believes that Defendants had taken acts that would
10 permit them to procure that profit instead of CRONIN.

11
12 26. Plaintiff is informed and believes that Defendant GALA was
13 the sales director over WALES and that the sales team under WALES
14 was doing poorly at the time that CRONIN was told by WALES to
15 terminate his short investments and go long and that one motivation
16 for the representations of WALES was so that WALES and GALA could
17 make more money for MONEX and for themselves. Plaintiff is informed
18 and believes that GALA was fully aware of the representations made
19 by WALES and either instructed WALES to make them or fully approved
20 of them by reason of the motivation just described.

21
22 27. Plaintiff is informed and believes, and thereon alleges,
23 that Defendants followed the same or a similar pattern with all of
24 Sherry Boland's former clientele (representing about a \$21 million
25 book of business) and that those clientele lost most of their
26 investments after Boland's termination.